

03-24925

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Chapter 13 Case:  
Case Number BKY 04-33126-DDO  
David Brandt,  
Debtor(s)

NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company, as Custodian moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on November 3, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 N. Robert St., St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 29, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 25, 2004 which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 28, 2003. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On May 29, 2001, David Brandt made, executed and delivered to Saxon Mortgage, Inc. his Note (hereinafter referred to as the "Note"), in the original principal amount of \$93,060.00 bearing interest from the date thereof at the rate of 11.906% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On May 29, 2001, to secure the payment of the Note, David Brandt executed and delivered to Saxon Mortgage, Inc. his Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Pine County, Minnesota, legally described as follows:

That part of the Southwest Quarter of Southeast Quarter (SW¼ of SE¼) of Section Seventeen (17) Township Thirty Nine (39) Range Twenty (20), described as follows: Beginning at the Southwest corner of said SW ¼ of SE ¼ ; thence North on the West line thereof for 250 feet; thence East and parallel to the South line of said SW¼ of SE¼ a distance of 209.8 feet; thence South and parallel to the West line of said SW¼ of SE¼ a distance of 250 feet to the South line thereof; thence West over and along the South boundary line of said SW¼ of SE¼ a distance of 209.8 feet to the point of beginning. Subject to County Highway No. 10 over and across the South 33 feet thereof.

which property has an address of: Rural Route 3 Box 291, Pine City, MN 55063. The mortgage was filed for record in the office of the Recorder, County of Pine, on June 11, 2001, as Document No.398473, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignments are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a plan dated May 25, 2004, which was not confirmed at the time of filing this motion. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

4 payments @ \$1,081.96	\$4,327.84
3 late charges @ \$47.53	142.59
Attorneys Fees & Costs	<u>675.00</u>
TOTAL POST-PETITION	\$5,145.43

Through Debtors' failure to make current post-petition payments. No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal	\$92,292.81
Interest	13,454.80
Advanced Escrow	1,598.22
Accumulated late fees	1,283.19
Misc. fees/expenses	2,591.44
Attorneys Fees & Costs	<u>2,838.73</u>
TOTAL	\$114,059.19

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company, as Custodian moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: October 6, 2004.

Signed: /e/ Lawrence P. Zielke

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

VERIFICATION

I, Dan Arentsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 4, 2004 Signed: [Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120

S98473

No. 21559  
 Registration Tax heretofore of \$ 215.13  
 Paid this 11 day of April, 2001  
David Brandt County Treasurer  
 countersigned and payment received  
 by David Brandt County Auditor

OFFICE OF COUNTY RECORDER  
 STATE OF MINNESOTA  
 COUNTY OF FINE

This is to certify that this instrument was filed in this  
 office on the 11 day of April  
2001 at 10 o'clock AM  
 and was recorded as  
 Document # 398473  
 County Recorder  
 By Adeline Miller Dep.  
 Rec'd 115 Fee 115 WC Rec'd

Loan Number:  
 11364420

(Space Above This Line For Recording Date)

## MORTGAGE

Record and Return to:  
 Meritech Mortgage Services, Inc.  
 4708 Mercantile Drive  
 Ft. Worth, Texas 76137

THIS MORTGAGE ("Security Instrument") is given on May 29, 2001.  
 The mortgagor is  
 David Brandt, A Single Man

UNIVERSAL TITLE  
 PRODUCTION CENTER  
 7777 WASHINGTON AVE.  
 EDINA, MN 55436  
 38-61194M

("Borrower"). This Security Instrument is given to AND DRAFTED BY: TURPEN  
 Saxon Mortgage, Inc.

which is organized and existing under the laws of the State of Virginia, and whose  
 address is 27121 Torrey Centre Drive, Suite 230  
 Foothill Ranch, California 92610 ("Lender"). Borrower owes Lender the principal sum of  
 Ninety-Three Thousand Sixty and 00/100ths Dollars (U.S. \$93,060.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
 June 1, 2016 and for interest at the yearly rate of 11.906 percent.

This Security Instrument secures to Lender: (a) the repayment of  
 the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
 payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security  
 MINNESOTA-Single Family-PHMA/PVLMC UNIFORM INSTRUMENT

ORIGAMI 10/01  
 Page 1 of 3

Form 3024 5/00  
 Amended 5/01  
 115

VMP MORTGAGE FORMS - 1000/531-7251

That part of the Southwest Quarter of Southeast Quarter (SW1/4 of SE1/4) of Section Seventeen (17), Township Thirty-nine (39), Range Twenty (20), described as follows: Beginning at the Southwest corner of said SW1/4 of SE1/4; thence North on the West line thereof for 250 feet; thence East and parallel to the South line of said SW1/4 of SE1/4 a distance of 209.8 feet; thence South and parallel to the West line of said SW1/4 of SE1/4 a distance of 250 feet to the South line thereof; thence West over and along the South boundary line of said SW1/4 of SE1/4 a distance of 209.8 feet to the point of beginning. Subject to County Highway No. 10 over and across the South 33 feet thereof.

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Pine County, Minnesota:

See Schedule A attached hereto and made a part hereof.

which has the address of **Route 3 Box 291 , Pine City**  
Minnesota **55063**

[Street, City],

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time

Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]


- ☐ Adjustable Rate Rider  
☐ Graduated Payment Rider  
☒ Balloon Rider  
☐ VA Rider  
☒ Arbitration Rider

- ☐ Condominium Rider  
☐ Planned Unit Development Rider  
☐ Rate Improvement Rider  
☐ Other(s) [specify]

- ☐ 1-4 Family Rider  
☐ Biweekly Payment Rider  
☐ Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____	 (Seal)
	David Brandt -Borrower
_____	_____ (Seal)
	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower



STATE OF MINNESOTA,

Isanti

County ss:

On this 29TH day of May, 2001,  
David Brandt, A Single Person

, before me appeared

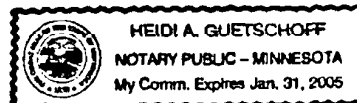
, or appeared by their lawful attorney-in-fact, , to me  
personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that  
he/XXXXXX executed the same as his/XXXXXX free act and deed.

*Heidi A. Guetschoff*  
Notary Public

My Commission Expires:

1-31-2005

This instrument was prepared by  
Saxon Mortgage, Inc.  
4880 Cox Road  
Glen Allen, Virginia 23060





400471

## ACKNOWLEDGEMENT

State of California

County of Orange

On 5.29.2006 before me, Kimberly D Shouse  
(Date) (Notary)personally appeared Ralph Fleischer, Assistant Vice President  
(Signer(s))

personally known to me or proved to be on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Notary's Signature)



401915

## COUNTY OF PINE

This is to certify that this instrument was filed in this office on the 28 day of September 2001 at 10 o'clock P. M.  
and was recorded as  
Document # 401915

By Terry Hatfield Doc.  
Notary Public 1012 WC Recd.

## ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION,  
Saxon Mortgage, Inc.  
4880 Cox Road, Glen Allen, Virginia 23060

The State of Virginia  
BANKERS TRUST COMPANY, AS CUSTODIAN

(whether one or more), the Assignor's interest in the Mortgage dated May 29, 2001  
executed by  
David Brandt, A Single Man

as Mortgagor, to Saxon Mortgage, Inc.

as Mortgagee, and filed for record 6-11-01  
(or in Book of Page  
(Registrar of Titles) of Pine  
right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants  
with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage  
the sum of  
Ninety-Three thousand Sixty and 00/100ths

DOLLARS, with interest thereon from July 1, 2001  
right to sell, assign and transfer the same.

Prepared By:  
Saxon Mortgage, Inc.  
4880 Cox Road  
Glen Allen, Virginia 23060  
Loan Number: 11364420

## ASSIGNOR

Saxon Mortgage, Inc.

By Ralph Fletcher  
Ralph Fletcher  
its Assistant Vice President

By \_\_\_\_\_

its

THE STATE OF California )  
COUNTY OF Orange )

This instrument was acknowledged before me on May 29, 2001  
Ralph Fletcher  
as Assistant Vice President

Saxon Mortgage, Inc.

Commission Expiration: April 29, 2004

of Saxon Mortgage, Inc. by \_\_\_\_\_ and  
as Assistant Secretary of

My Comm. Expires: \_\_\_\_\_

Kimberly D. Shouse  
(Typed or printed name)

Notary Public

Title or Rank

Serial Number, if any

Minnesota Assignment of Mortgage 2/87  
6000(MN) 7/00 1  
VAP MORTGAGE FILES - 600001-7201

201915

## ACKNOWLEDGEMENT

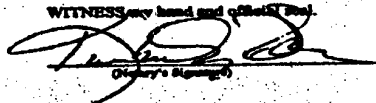
State of California

County of Orange

On 5-24-01 before me, Kimberly D. Shouse  
(Date) (Notary)personally appeared Ralph Flescher, Assistant Vice President  
signer(s)

personally known to me or proved to be on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
(Notary's Signature)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Case No. 03-50540-RJK  
David Brandt, Chapter 13  
Debtor(s)

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MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company, a ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$5,145.43.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than one month. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. In the present case the balance due Movant on the note and mortgage is \$114,059.19.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: October 6, 2004.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By/e/ Lawrence P. Zielke  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

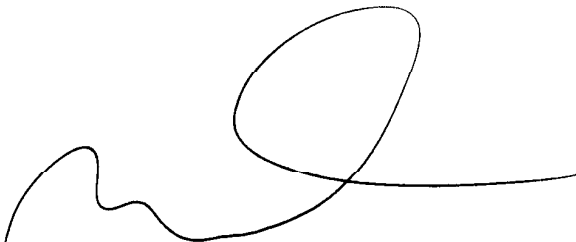
I, **Stephanie Pilegaard** says that on October 6, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

David R. Brandt  
2059 103rd Ave. NW  
Coon Rapids, MN 55433

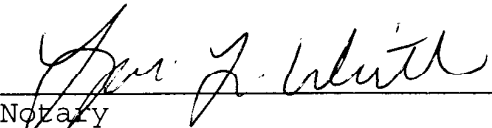
Robert J. Everhart, Esq.  
P.O. Box 120534  
New Brighton, MN 55112

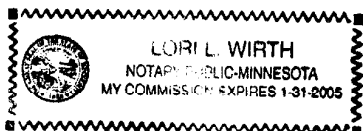
Michael J. Farrell, Trustee  
P.O. Box 519  
Barnesville, MN 56514

United States Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

  
\_\_\_\_\_  
Stephanie Pilegaard

Subscribed and sworn to before me October 6, 2004.

  
\_\_\_\_\_  
Notary





03-24925  
011364420

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-50540-RJK

David Brandt,  
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 3, 2004.

**THIS CAUSE** coming to be heard on the Motion of Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company, as Custodian, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company, as Custodian, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

That part of the Southwest Quarter of Southeast Quarter (SW $\frac{1}{4}$  of SE $\frac{1}{4}$ ) of Section Seventeen (17) Township Thirty Nine (39) Range Twenty (20), described as follows: Beginning at the Southwest corner of said SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$ ; thence North on the West line thereof for 250 feet; thence East and parallel to the South line of said SW $\frac{1}{4}$  of SE $\frac{1}{4}$  a distance of 209.8 feet; thence South and parallel to the West line of said SW $\frac{1}{4}$  of SE $\frac{1}{4}$  a distance of 250 feet to the South line thereof; thence West over and along the South boundary line of said SW $\frac{1}{4}$  of SE $\frac{1}{4}$  a distance of 209.8 feet to the point of beginning. Subject to County Highway No. 10 over and across the South 33 feet thereof.

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court